

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

8YY Access Charge Reform

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WC Docket No. 18-156

**COMMENTS OF
THE AD HOC TELECOMMUNICATIONS USERS COMMITTEE**

The Ad Hoc Telecom Users Committee (“Ad Hoc”) hereby submits its comments in response to the Further Notice of Proposed Rulemaking (“*FNPRM*”) in the docket captioned above.¹ For the reasons set forth below, Ad Hoc supports the Commission’s proposal to implement its long-standing “bill and keep” policy and reduce 8YY originating access charges as proposed in the *FNPRM*. In light of the multi-year delay in implementing those reductions due to inaction by prior Commissions, Ad Hoc urges this Commission to make the revised rules effective immediately or, at a minimum, in time for the 2019 annual

¹ *8YY Access Charge Reform*, WC Docket 18-156, Further Notice of Proposed Rulemaking, FCC 18-76, rel. June 8, 2018.

access filing rather than further delaying relief for a three-year transition period as proposed in the NPRM.

For nearly 40 years, Ad Hoc has represented enterprise customers in Commission proceedings. Ad Hoc members are among the nation's largest and most sophisticated corporate buyers of information technology ("IT") and communications services. Committee members come from a broad range of industry verticals – including banking, construction, energy, financial services, insurance, information services, logistics, manufacturing, and payment processing – and they maintain tens of thousands of business premises in every region of the country. As substantial, geographically-diverse end users of network and IT services nationwide, Ad Hoc members are uniquely qualified to provide a credible, unbiased, and informed perspective regarding the impact of Commission proceedings on customers in the communications marketplace.

Because Ad Hoc admits no wireline or wireless service providers as members and accepts no funding from them, Ad Hoc's positions are not influenced by any commercial self-interest that would support unnecessary regulatory constraints on competing service providers. Indeed, as high-volume purchasers of IT and communications products and services, Ad Hoc members have historically been among the first beneficiaries of the Commission's de-regulatory efforts. As a consequence, Ad Hoc has consistently advocated for de-regulation in communications markets as soon as a market becomes competitive.

Ad Hoc members are also some of the country's largest users of toll free service and therefore have a substantial stake in ensuring that the Commission's rules and policies prevent fraudulent activity by unscrupulous network service providers and discourage uneconomic "traffic pumping" to toll free numbers. Toll free service is a critical resource for Ad Hoc's members and for other toll free customers who have made significant investments in customer service and customer outreach systems that depend upon reliable and secure toll free service. Over time, toll free customers and the callers seeking to connect with them have learned to depend on toll free service in a wide range of settings, from credit card issuers seeking rapid notification of a stolen card to pharmaceutical companies responding to adverse drug reactions to manufacturers educating purchasers about product safety. Thus, Ad Hoc members and toll free customers like them are the parties who are injured by the traffic pumping to 8YY numbers that inevitably results when 8YY originating access is not treated in a manner consistent with the Commission's bill and keep policy.

**I. THE COMMISSION SHOULD NOT FURTHER DELAY
IMPLEMENTATION OF BILL AND KEEP FOR 8YY ORIGINATING
ACCESS CHARGES**

In proposing the rule changes described in the FNPRM, the Commission references the Further Notice of Proposed Rulemaking adopted in the *2011 Transformation Order*,² in which the Commission recognized that treating 8YY

² *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; GN Docket No. 09-51; CC Docket Nos. 01-92 and 96-45; WT Docket 10-208, Report and Order and Further

originating access differently from terminating access would lead to market distortions. Seven years later, those distortions have resulted in the fraud and traffic pumping schemes that are rampant in this segment of the market today.

As the Commission observed in the 2011 order, both originating access for toll free calls and terminating access for “sent paid” calls have the same structural defect from an economic perspective: the party who *chooses* the product does not *pay* for it and thus creates no competitive market pressure on the provider. In the case of originating access for 8YY traffic, the party who chooses the local exchange carrier (“LEC”) providing such access does not pay the charge for the interexchange call that uses such access and therefore does not incur the cost of inflated access charges. Because the choosing party has no incentive to select the provider with the lowest access charges, there is no competitive pressure on those charges. But there are powerful incentives for unscrupulous actors to take advantage of this broken market by generating traffic to 8YY numbers for no purpose other than to inflate the access charge revenues that are ultimately paid by toll free service customers.

For some 25 years leading up to the *2011 Transformation Order*, the Commission treated originating 8YY access identically to terminating access for “sent paid” calls.³ The *FNPRM* would restore that treatment by moving

Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) at paras. 1303-1304 (“*Transformation Order*”).

³ See Letter from Colleen Boothby, Counsel to Ad Hoc Telecommunications Users Committee, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al. (filed May 19, 2017) at 1.

originating access charges for originating 8YY traffic to a bill and keep system, consistent with terminating access charges.

The legitimacy of the use of bill and keep as a mechanism for access traffic has not been the subject of serious debate for quite some time.⁴ It is economically rationale, cost-based, in keeping with Commission policy, and it will put an immediate stop to the traffic pumping problem that is plaguing the industry. There is overwhelming evidence and consensus that the incremental cost of originating or terminating a minute of voice telephony use is so infinitesimally small that it is barely worth measuring – and certainly not worth charging for. Moreover, the FCC has worked to remove implicit subsidies from access charges since it established its first access charge regime in 1984. Indeed, removal of those subsidies (still embedded in the charges for 8YY originating access charges) became a statutory requirement more than 20 years ago with the passage of the Telecommunications Act of 1996,⁵ yet they still persist.

With some charges for 8YY originating access set as much as half a million times in excess of the incremental cost of providing the service (assuming an access charge of a nickel a minute and the incremental cost of providing that access at \$0.0000001 per minute),⁶ it is small wonder that traffic pumping schemes exist.

⁴ *FNPRM* at paras. 2 and 13

⁵ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

⁶ *Transformation Order*, note 2, *supra*, at para. 752.

II. THERE IS NO EVIDENCE THAT ADOPTION OF BILL AND KEEP FOR 8YY ORIGINATING ACCESS WILL HARM TOLL FREE CALLERS

The *FNPRM* makes clear that 8YY service will remain “toll free” following adoption of bill and keep for 8YY originating access: callers will still pay no toll charge for a toll free call.⁷ Opponents of bill and keep for originating 8YY access charges nevertheless raise concerns that toll free callers will be harmed by adoption of bill and keep. And yet, despite multiple opportunities over many years to provide evidence to support their concerns, opponents have failed to present any evidence that such harm will occur (and, to Ad Hoc’s knowledge, no party has claimed that it has plans to separately charge callers for the costs associated with 8YY originating access).

On the other hand, there is substantial evidence that consumers are *not* harmed by the application of bill and keep to 8YY call originations. Specifically, in wireless markets, the bill and keep framework has been in place for years and no separate, toll-free specific charges have been imposed on callers. Consumers routinely make 8YY calls over their wireless devices with no cries of fraudulent representation or harm.⁸ In fact, some of the largest players in the wired local service environment for residential consumers – AT&T and VZ – are also the largest wireless carriers that have operated in a bill and keep environment for 8YY call origination without imposing additional fees or surcharges on their subscribers for many years.

⁷ *FNPRM* at 92.

⁸ Moreover, wireless carriers that do not receive access revenues for originating 8YY traffic continue to remain profitable and able to invest in their networks.

III. NO REVENUE RECOVERY MECHANISM OR THREE-YEAR DELAY IN THE TRANSITION TO BILL AND KEEP IS NECESSARY

Ad Hoc urges the Commission to end the long wait for the adoption of bill and keep for 8YY originating access. The Commission originally proposed this change seven years ago in the *Transformation Order* and proposed doing so in a single step, not over a three-year transition period. Despite multiple opportunities over a period of many years, no party to date has provided any evidence of the need for a transition. In addition, no party has provided evidence that a revenue recovery mechanism is necessary.⁹ Despite this fundamental evidentiary failure, the *NPRM* nonetheless proposes to move originating 8YY traffic to bill and keep over a three-year period. No providers claiming harm from the instant proposal submitted evidence of either the magnitude of originating 8YY access minutes, the costs associated with providing those minutes, or the revenue that would be lost (revenue grossly in excess of cost) by the adoption of bill and keep.

Parties have been on notice regarding the proposal to move 8YY originating access to the same bill and keep mechanism used for terminating access since the Commission issued its original *FNPRM* as part of the 2011 *Transformation Order* and then reiterated it in the instant *FNPRM* in 2017. Adopting a three-year transition would simply penalize for an additional three years the toll free subscribers who have already

⁹ As recently as May of this year, Frontier made *ex parte* filings in response to the Commission's release of the draft *FNPRM* in which it argued for a transition period or a revenue recovery mechanism. Yet Frontier failed once again to proffer any evidence or otherwise document any need for such relief. See Letters from A.J. Burton, Vice President, Federal Regulatory, Frontier Communications, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 18-156 (filed May 24, 2018 and May 31, 2018). See also Letter from Thomas Whitehead, Vice President, Federal Government Affairs, Windstream Services, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 18-156 (filed June 29, 2018) claiming that the "costs" of 8YY originating access would be shifted to consumers, with no support or data regarding either the revenue generated by or the costs of providing 8YY originating access.

been forced to pay inflated charges and to pay for the fraudulent calls generated by traffic pumpers for the past seven years, because some LECs are either engaged in traffic pumping or utterly failed to plan for this change since the Commission proposed it seven years ago.

As the parties that are harmed the most by perpetuation of the existing access charge plan, 8YY toll free customers like Ad Hoc's members deserve to be better protected by the Commission from the ongoing economic distortions and even fraudulent behavior revealed in the record of this proceeding. And their voice merits considerable weight in the Commission's deliberations.

Adopting any delay or deferral of a bill and keep regime will simply allow perpetrators of fraud and traffic pumping to eke out another three years of illicit revenues. The Commission should instead foreclose the fraudulent revenue opportunity immediately. Doing otherwise will cause toll free subscribers (like Ad Hoc's members) to continue to bear the economic burdens associated with those fraudulent calls. As a result, to the extent that 20% or more¹⁰ of the toll free per minute charges assessed on toll free subscribers results from traffic pumping and arbitrage, consumer costs for the goods and services purchased from toll free subscribers are also inflated. And the unnecessary and uneconomic expenses incurred by toll free subscribers go beyond the per minute charges associated with usage generated by traffic pumpers. Those expenses also include the costs of increased network facilities on the toll free subscriber's end of the call and increased call center capacity and expenses.

¹⁰ Reply Comments of Somos, filed August 15, 2017, at 3.

The revenue flow from the pockets of mass market consumers and customers of toll free services to the pockets of traffic pumpers should be stopped immediately, not over the course of a slow transition plan.

CONCLUSION

Supracompetitive, uneconomic 8YY access charges have given certain carriers and other providers a seven-year windfall at the expense of consumers. The Commission should remedy this situation without further delay by requiring that 8YY originating access charges be reduced to the same level as terminating access charges as part of the next access tariff filing, if not immediately.

Respectfully submitted,

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